UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

RV ASSOCIATES[1]

Employer

and Case 19-RC-13952

LABORERS LOCAL 252, WASHINGTON
& NORTHERN IDAHO DISTRICT
COUNCIL OF LABORERS[2]

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All laborers employed by the Employer with the following geographic areas in the State of Washington: Whatcom, Skagit, Snohomish, King, Pierce, Thurston, and Lewis Counties; that portion of Pacific County north of a straight line made by extending the north boundary of Wahkiakum County west to the Pacific Ocean; Grays Harbor, Clallam,

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[1] The Employer's name appears as corrected at hearing.

[2] Petitioner's name appears as corrected at hearing.

> Jefferson, Mason, Kitsap, Island, San Juan, Chelan, Kittitas, and Yakima Counties; and that portion of Douglas County lying west of 120 degrees meridian; but excluding all office clerical employees, guards and supervisors as defined by the Act, and all other employees

The Employer is engaged in the construction business, with a principal place of business located in Port Orchard, Washington. At hearing, the parties stipulated that the appropriate unit includes all employees performing laborer's work within the above geographical area. Further, the parties stipulated that there is no contract bar to an election. The only issue involved herein is Employer's contention that the eligibility formula for the construction industry, as specified by the Board in *Steiny and Company*, 308 NLRB 1323 (1992), should not be followed in this case.

In the *Steiny* case, the Board said that the eligibility formula set forth in *Daniel Construction*, 133 NLRB 264 (1961), as modified at 167 NLRB 1078 (1967), is applicable in all (with minor exception not relevant here) construction industry elections. The formula states that, in addition to unit employees employed during the payroll period immediately preceding the date of the Decision and Direction of Election, unit employees are also eligible if they have been employed for 30 work days or more within the 12 months preceding the eligibility date, or if they have had some employment in those 12 months and also have been employed for 45 work days or more within the 24-month period immediately preceding the eligibility date, unless they were terminated for cause or quit voluntarily prior to the completion of the last job for which they were employed.

In the hearing, the Employer's general manager and vice president, Stephen Davis, explained that the Employer customarily terminates employees at the conclusion of a project, unless the Employer has an expectation at that time of using the employees on the next project, in which case the employees are only laid off. Currently, there are ongoing projects. The Employer is not a "seasonal" employer, i.e. one with a recurrent, single seasonal peak. The Employer has a core group of about seven employees, who are more or less continuously employed, with occasional short lay-offs. The Employer also from time to time hires employees through Petitioner's hiring hall or otherwise for a specific project, and then terminates those employees when the project ends. Davis, speaking for the Employer, seemed to be contending that individuals who were "terminated for cause" because the project for which they had been hired had ended, should not be eligible to vote because the Employer had no specific plans to rehire them. Record evidence suggests, but does not clearly establish, that in addition to the core employees, there may be about two individuals who would be eligible to vote in accordance with the *Daniel* formula.

In the 1967 *Daniel* case, the Board said:

> In our opinion, the Board's original voting eligibility formula will assure that those employees who have a reasonable expectation of future employment with the Employer, and thereby have a continuing interest in the Employer's working conditions will be eligible to vote. At the same time, however, we are not unmindful that the standard or formula applied must not be so broad in application that it will permit individuals who have no likelihood of future employment with the Employer to decide the question whether the employees will have representation. For this reason, we think that the desired result can be achieved by excluding those individuals who have quit voluntarily *or have been terminated for cause prior to the completion of the last job for which they were employed.* Therefore, we will reaffirm the Board's original eligibility formula with the aforementioned modification. [Emphasis added.]

The Employer's concerns here are directed toward the eligibility of individuals who were terminated at the completion of a project. The eligibility formula excludes persons who were terminated

for cause *prior* to the completion of a project, while including those terminated at the conclusion of a project. The distinction is obviously to exclude those who the employer deemed unworthy of future employment for whatever reason, while including those whose work merely ended. Here, the employees *are* eligible for continued or re-employment. The Board's findings in *Steiny* make it clear that it does not wish to revisit the issue of eligibility formulas in the construction industry on a case-by-case basis. The Board also explains that the formula takes into account variations among employees along the continuum from "totally stable workforce" to "brief, non-repetitive" employment.

As has been said above, *Steiny* requires that the *Daniel* formula, as modified, be used in all construction industry cases; inasmuch as this is a construction industry case, the *Daniel* formula will be used here.

There are approximately 7 employees in the unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision including employees who did not work during that period because they were ill, on vacation, or temporarily laid off, and those in the unit who have been employed for 30 working days or more within the 12 months preceding the eligibility date for the election, or had some employment during those 12 months and have been employed for 45 working days or more within the 24-month period immediately preceding the eligibility date, excluding those who have quit voluntarily or have been terminated for cause prior to the completion of the last job for which they were employed. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who quit voluntarily or were discharged for cause prior to the completion of the last job for which they were employed, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by LABORERS LOCAL 252, WASHINGTON & NORTHERN IDAHO DISTRICT COUNCIL OF LABORERS.

NOTICE POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters

and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co*., 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, 915 Second Avenue, 29th Floor, Seattle, Washington 98174, on or before May 5, 2000. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (503) 326-5387. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted. To speed preliminary checking and the voting process itself, the names must be alphabetized.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by May 12, 2000.

DATED at Seattle, Washington, this 28th day of April, 2000.

/s/ PAUL EGGERT

Paul Eggert, Regional Director
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362-3350-6000